

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6036 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HASMUKH BHAGWANJI

Versus

STATE OF GUJARAT & OTHERS

Appearance:

MR DM THAKKAR for the Petitioner

None present for the Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 26/11/96

ORAL JUDGEMENT

1. Having heard the learned counsel for the petitioner and after perusing the order of the Medical Appeal Tribunal, Rajkot dated 30th September, 1986 made in Appeal (MAT) No.7 of 1986, I am satisfied that the matter deserves to be remanded back to the Tribunal for fresh consideration of the matter.

2. The petitioner was employed with Shrikant Building Works, a private concern, situated at Rajkot.

The petitioner while doing press work on machine at the employer's factory met with an accident wherein the left hand of the petitioner was crushed in the power press machine. Because of the aforesaid accident, the entire palm including the fore fingers of the left hand of the petitioner was amputated. The petitioner was covered under the Employees' State Insurance Corporation Scheme and had applied to the Corporation, the respondent no.3 herein, for the disability incurred by him due to the injuries sustained in the aforesaid accident. The petitioner has come up with a case of total disablement as the petitioner could not work any more with the left hand. The Medical Board assessed the disability of the petitioner to the extent of 60% instead of 100% vide its decision dated 7th June, 1986. Being aggrieved of the aforesaid decision of the Medical Board, the petitioner preferred an appeal before the Medical Appeal Tribunal at Rajkot and that appeal was dismissed by the Tribunal vide its order dated 30th September, 1986. Hence, this Special Civil Application.

3. The learned Tribunal has not accepted the claim of the petitioner of the enhancement of the percentage of disablement on the ground that the appellant (the petitioner herein) has not stated any ground in the appeal memo for increasing the percentage of disablement. Another reason has been given that the petitioner has not stated in the appeal memo as to what work he was doing, but during the course of arguments it was stated that the petitioner was doing press work. Yet another reason has been given that the petitioner has not shown as to whether press work cannot be done by one hand only. The Tribunal while giving the finding that the petitioner has lost the left hand has made a casual approach in the matter whether the petitioner sustained the injury in the accident which has resulted in the loss of left hand, rendered him unfit for work which he was doing or not. Not only this, but the Tribunal has proceeded on highly technical ground. Even if it is taken that in the appeal memo the petitioner has not given out any ground for increasing the percentage of disablement, but the very fact that the petitioner filed an appeal against the decision of the Medical Board gives out that he was not satisfied with the assessment made of disablement by the Medical Board. The substance and not the form should have been considered by the Tribunal. The approach of the Tribunal should have been objective and not the subjective. It is a case where the Tribunal has to consider whether the assessment of the disability made by the Medical Board is correct or not, and in case the petitioner has come up with a case that it is not correct

then the matter should have been decided on merits rather than to decline to grant the relief on the aforesaid grounds.

4. In the result, this Special Civil Application succeeds in part. The order of the Medical Appeal Tribunal, Rajkot dated 30th September, 1986 made in Appeal (MAT) No.7 of 1986 is set aside and the matter is remanded back to it to decide the matter afresh in accordance with law. It shall be open to the petitioner to produce all the relevant material in the form of affidavit in support of his claim for the enhancement of the percentage of disability. Rule is made absolute in the aforesaid terms with no order as to costs.